IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 261 OF 2006

Laxman @ Balu Namdeo Hursale. ...Applicant
V/s.
State of Maharashtra. ...Respondent

Shri J. Shekhar for Applicant.
Ms.S.D. Shinde, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 7, 2006

P.C. :-

. The applicant was arrested by the Swargate Police Station on 16th September, 2003 in connection with C.R.No.289/2003. It was alleged in the complaint that one Mahendra alias Bablu Vasantraj Kavedia was killed near Harjeevan hospital, Pune, by unknown persons. The Swargate Police arrested 10 people in connection with the said offence on 6th October, 2003. The provisions of the MCOC Act were made applicable after obtaining necessary sanction from the competent authority.

2. It is submitted that the only evidence against the present applicant is in the form of confessional statement made by accused Gajanan Marne. It is

submitted that three accused have been released on bail by this Court and the applicant seeks bail on the ground of parity. It is submitted that the confessional statement was extracted from the accused Gajanan Marne who had few days before the statement was recorded, had written to the Magistrate complaining him that the Investigation Agency was compelling him to give confession under the MCOC Act and soon thereafter the confession of the accused was recorded. He submitted that the said accused retracted his confession on 17th October, 2003. Learned Counsel submitted that the chargesheet under the MCOC Act has been filed, the case was committed to the Special Court for framing of charge. It is submitted that the case was not likely to be taken for quite some time and therefore, the applicant was entitled to be released on bail. He further submitted that the only allegation against the present applicant was that on the alleged date of the crime, the applicant was present at the scene of the offence and he had cut the telephone wire of one of the telephone booth which was situated near the scene of offence and it was further alleged that he was member of

the organized crime syndicate and certain cases were registered against him.

3. Learned APP, on the other hand, has invited my attention to the affidavit-in-reply which is filed by the Assistant Commissioner of Police, Shri Sadashiv Jadhav. In the affidavit-in-reply, it is stated that the murder of Mahendra was committed by the organised crime syndicate and that the applicant was member of the said organised crime syndicate. He submitted that the confession statement was made by the leader of the gang Gajanan Marne and the said statement was admissible evidence. He submitted that the present applicant was involved in number of offences of dacoity, theft, extortion and robbery alongwith a leader of the gang Gajanan Marne. The cases which were pending against the present applicant and the said Gajanan Marne have been mentioned in para 8 of the affidavit-in-reply.

4. I have given my anxious consideration to the submissions made by the learned Counsel for the applicant and learned APP for the State.

5. Learned Counsel for the applicant has relied upon a list of judgments. The submission made by the learned Counsel for the applicant cannot be accepted. The applicant alongwith leader of the gang Gajanan Marne is involved in at least five cases of dacoity, grievous hurt and extortion which are pending. There is sufficient evidence, therefore, to come to the conclusion that he had acted as a member of the organised crime syndicate and was continuously carrying on unlawful activity. The ratio of the judgment, therefore, in the case of **Deepak Dhondiba Misal V/s. State of Maharashtra** in Criminal Application No.4400/2004 cannot be made applicable to the facts of the present case. In the said case, the applicant was a Corporator who was having his own business and was not engaged in any manner in the principal field. The applicant, on the other hand, is involved in number of offences with the gang of Gajanan Marne. Similarly, the ratio of the judgment in the case of Manoj Sharma, Sambhaji Dattatraya Pote who were co-accused in the present case, do not apply to the facts of the present

case. In the said case, there was no criminal antecedents of the said applicants and no role was assigned to the said applicants in the said said case and in view of this, the learned Single Judge was pleased to grant bail to the said applicants Manoj Sharma and Sambhaji Pote. The ratio of the said judgment is not, therefore, applicable to the facts of the present case. Learned Counsel for the applicant also relied on the judgment reported in **2004 (2) Bom. C.R. (Cri.) 913 in the case of Vashishtha Rambhau Andhale V/s. State of Maharastra** where the Single Judge of this Court held that while considering the application for bail, the Court has to be satisfied that there are reasonable grounds for believing the accused for not doing the said offence. There cannot be dispute regarding ratio of the said Judgment. The ratio of the said judgment cannot be applicable to the present case. Since there is sufficient evidence to indicate prima facie that the applicant was a member of organised crime syndicate and he has acted in furtherance with the common intention of the members of the said gang and had played active role in the murder of said Mahendra.

6. Learned Counsel for the applicant also relied upon the judgement of the Single Judge of this Court **Sameer Madan Patil V/s. State of Maharashtra** in Criminal Application No.1381/2002. In the said case, the learned Single Judge of this Court after examining the case pending against the applicant in the said case came to the conclusion that there was reasonable ground for believing that the applicant in the said case was not guilty for the said offence of the organised crime committed by the Act 1999 and that there was no tangible material on record to indicate that the applicant was involved in the commission of the said offence. The ratio of the said judgment also does not apply to the present case.

7. Learned Counsel further relied upon the judgments where bail was granted to the accused who are involved under the MCOC Act. The ratio of the said judgments, in my view, will not apply to the facts of the present case. There is no substance in the submissions made by the learned Counsel for the

applicant.

. The application for bail is rejected and disposed of as such.

(V.M. Kanade, J.)